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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

Billed Party Preference
for 0+ InterLATA Calls

CC Docket No. 92-77

INITIAL COMMENTS
OF
POLAR COMMUNICATIONS CORP.
AND
DIGITAL TECHNOLOGIES, INC.

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SUMMARY

Billed Party Preference ("BPP") is a technology whose great cost is still uncertain. It would provide marginal, if any, benefits, while adversely affecting competition in the operator services and competitive payphone marketplace. The existing mechanisms for "0+" callers to reach their carrier of choice are effective, well-publicized and not intimidating consumers. They are using these alternative access methods at a steadily increasing rate, primarily as a result of aggressive advertising promoting their use. This phenomena has been having an ameliorative effect on rates. In the final analysis, the current state of the marketplace does not warrant the mandate of a costly new technology with negligible pros and many cons.

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Polar Communications Corp. ("Polar") and its affiliate Digital Technologies, Inc. ("Digital"), acting through counsel and in accordance with Sections 1.415 and 1.419 of the Commission's Rules, the Commission's Further Notice Of Proposed Rulemaking, released June 6, 1994 ("FNPRM") and its Order, released June 24, 1994, in this Docket, hereby file their Initial Comments.

I. INTRODUCTION

1. The record built by the Commission on Billed Party Preference ("BPP") in the five years since the concept was first proposed by Bell Atlantic has been, by a clear margin, negative. Even BPP's original proponent now opposes it. BPP is a very expensive technology; how expensive the Commission still does not know with any reliable certainty. Its net benefits are marginal in light of the options already in place for "0+" callers to access their carrier of choice, options well-publicized and increasingly used. BPP's ostensible benefits do not justify its large (and potentially larger) direct costs. Moreover, BPP's likely

competitive impacts, particularly for independent payphone providers, are more concrete than the Commission concedes or seems willing to address. In the wake of BPP, the payphone marketplace will regress toward monopoly and the benefits of competition will be lost. In light of these factors, the Commission has more than ample grounds for concluding that mandating BPP is not in the public interest. It should do so promptly and terminate this proceeding once and for all.

II. POLAR'S CONTINUED INTEREST IN THIS PROCEEDING

2. Polar is a New Jersey-based provider of long-distance telephone, operator and, through its pay telephone subsidiary Digital, competitive payphone services. Polar currently provides long-distance and operator services to payphones and other types of call aggregators (e.g., hotels) throughout the United States. Digital currently provides pay telephone services at over 2,500 locations, principally in New York, New Jersey and Pennsylvania.

3. Polar and Digital currently collectively employ 190 individuals. The two companies have a combined annual payroll of over \$5 million. Digital has installed payphones at approximately 800 locations (roughly 33% of its locations) not, to its knowledge, previously served by any pay telephone service. Digital is a significant customer of several local exchange carriers.^{1/}

^{1/} For example, Digital pays on average some \$125,000 per month to local exchange carriers (e.g. New Jersey Bell, Bell of Pennsylvania) to obtain access for its payphones to the public switched telephone network. Digital currently has over \$400,000 on deposit with such carriers.

4. The Commission itself concedes that BPP will have a potential impact on interexchange carriers, operator service providers ("OSPs") and independent payphone operators. Since Polar and Digital collectively participate in all three such businesses they clearly have a direct and continuing interest in the outcome of this proceeding.^{2/}

**III. POLAR'S EMPIRICAL DATA CONFIRM THAT CONSUMERS HAVE
FULLY ACCEPTED AND ARE USING THE
EXISTING ACCESS CODE SYSTEM**

5. The Commission has urged commenters to submit their own "empirical...data on consumer acceptance of access code dialing and on the value to consumers of being able to reach their preferred carrier without using access codes." FNPRM, supra, at p. 13, para. 18. Polar's own analysis, based on a sampling of 3226 non-sent paid calls made from Digital payphones during June 1994, is that consumers have totally accepted, are comfortable with, and are aggressively using access codes to reach their preferred long-distance company. Based on Station Message Detail Reports, Polar determined that sixty seven percent (67%) of these "0+" calls (i.e., some 2175 calls) were initiated on a alternative access basis.^{3/} The remaining thirty-three percent (33%) of the calls

^{2/} On July 6, 1992, Polar previously filed comments in this Docket.

^{3/} By "alternative access" Polar means access through conventional access codes (i.e., 800, 950, 10XXX) or special access methods (e.g., 1-800-COLLECT).

(i.e., some 1051 calls) were placed through the presubscribed carrier.^{4/}

6. In addition, Polar reviewed the relevant billing records for the months of June 1993 through May 1994 to assess the percentage of dial-around calls to AT&T from Digital payphones during this specific twelve-month period. It discovered that on average during this period 32.56% of all "0+" calls were dialed-around the presubscribed carrier to AT&T. Over the course the study period this percentage level was steadily increasing. For example, in December 1993, AT&T dial-around was 33.89% of all "0+" calls. By April 1994, the percentage had climbed to 41.61% of all such calls.^{5/}

7. This growing use of alternative access is explained in major part by the aggressive promotional campaigns (indeed, "war") being conducted by the major interexchange carriers to encourage dial-around calling. Originally, the advertising focused on use of 10XXX codes like AT&T's 10288. But it has since expanded to include special "800" access numbers, including 1-800-COLLECT, 1-

^{4/} These data are consistent with the trends identified in the recent study commissioned by the Competitive Telecommunications Association. "Report on Applicability and Costs of Billed Party Preference - A Market Impact Report" Frost & Sullivan, Inc., October 1993 ("Comptel Report"), at p. 4 ("Dial-around has dramatically increased in recent years, accounting for over 50 percent of call traffic in some locations."); id. at p. A-2.

^{5/} This upward trend is consistent with the recent findings by the American Public Communications Council. "Per Call Dial-Around Compensation: The Numbers Game", Albert H. Kramer and Robert F. Aldrich, Perspectives, Vol. 2, No. 4, July/August 1994, at p. 4 ("Some SMDR data indicated that AT&T dial-around traffic in this sample doubled from October 1993 to April 1994")

800-OPERATOR, 1-800-CALLATT and others. These special access codes are being heavily advertised on national television by AT&T and MCI, as well as in the print media. See, Comptel Report, supra, at p. 4.

8. The foregoing empirical data only confirm, to an even greater extent, that "consumers are increasingly making use of [their] options to dial-around OSPs and reach their preferred carrier." Final Report of the Federal Communications Commission pursuant to the Telephone Operator Consumer Services Improvement Act of 1990, November 13, 1992 ("Final TOCSIA Report"), at p. 30; see, Comptel Report, supra, at p.4. As the Commission itself predicted might occur, "callers [have] become more comfortable with access codes over time...." (i.e., since the Final TOCSIA Report). FNPRM, supra, at p. 7, para. 10. This expanding comfort level also confirms that the "value" of any additional convenience purportedly offered by BPP has diminished (if not evaporated). These data do not support imposition of a BPP system with a rapidly declining increment of benefit at a cost of well over a billion dollars.^{6/} Based on the experience of both Polar and Digital, their customers are fully satisfied with the existing vehicles for accessing their chosen carrier and are freely taking advantage of these mechanisms.

^{6/} Indeed, to some degree there would be greater inconvenience associated with BPP. For example, the call would have to go through two operator systems, especially where live operator assistance is required. See, FNPRM, supra, at p. 17, para. 29-30; Comptel Report, at p. 12. Even the Commission admits that there will be some degradation of the quality of operator services as a result of BPP. See, FNPRM, supra, at p. 17, para. 31. (No material degradation).

9. During this same study period (and indeed to date) neither Polar nor Digital has received any complaints from customers concerning any difficulty or confusion with using existing alternative access methods to reach their own choice of carrier. No such customers have requested or expressed a desire for a BPP-type system because they find the existing system to be inconvenient and cumbersome. Certainly, none have expressed a desire or willingness to pay the additional costs associated with implementing and operating BPP.

IV. REVENUE LOSSES FROM BPP WOULD INURE TO CONSUMERS DETRIMENT

10. The Commission acknowledges that operator service providers and the call aggregators that they serve (e.g., independent payphone operators, hotels, hospitals and educational institutions) will suffer a loss of revenue due to BPP. These revenue losses will have to be offset in some form if the current levels of competitive service are to survive or expand. The alternatives are straightforward. One solution would be higher prices for other services provided at the aggregator location, higher prices to be paid by consumers. More likely, however, it would be lower costs through the reduction (or elimination) of services offered. Again, it is consumers that would suffer from the loss of these options.

11. For operator services providers, Polar strongly believes that BPP would produce a trend back towards a more concentrated

a few other large interexchange companies.^{2/} The Commission recognized that competition had spurred even these major operator service providers to introduce new services. Final TOCSIA Report, supra, at p. 27. Such innovation would again be stifled. There would be little or no incentive for these providers to expend resources to develop and introduce new options to gain market share. The benefits of competition in the operator services arena would be sacrificed.

12. Further, the impact of these lost revenues will not fall solely on private enterprises, but also on public institutions (e.g., hospitals) and municipalities (e.g., New York City) which have shared in the monetary benefits of competition. These already financially strapped entities also will have to seek alternative sources of revenue through, perhaps, additional taxes on their constituents. In other cases, public services funded by commission revenues will have to be reduced or terminated, all to consumer detriment. The plain fact is that revenues from a competitive marketplace help underwrite the costs of providing public services or offering more convenient access to the telephone network. Thus, an airport, for example, that had offered added payphone services to afford greater convenience to its patrons would likely remove these payphones and replace them with yet another concession stand.

^{2/} Comptel, in releasing its Report, predicted that "BPP would effectively preclude all but the largest nationwide carriers from competing in the operator-assisted services market...." Comptel Bulletin, November 10, 1993, at p. 2 (attached to November 22, 1993 Ex Parte Communication filed in this Docket by Comptel).

13. The Commission largely ignores these negative impacts and makes scant attempt to quantify them in assessing the overall "benefits" of BPP. Polar believes that this constitutes regulatory shortsightedness and is not the foundation for reasoned decisionmaking. The Commission cannot direct the implementation of BPP without taking into account the real marketplace dynamics that will occur. To do so would be to proceed with regulatory horseblindness. Considering these inevitable revenue losses, and the economic ripple effect that they will have, leads to the conclusion that BPP is not in the overall public interest.

**V. BPP WOULD HAVE A SERIOUS IMPACT ON THE COMPETITIVE
PAY TELEPHONE MARKETPLACE**

14. In particular, the Commission gives short shift to the potential impact of BPP on independent payphone providers. In major part that may be because the Commission is not involved in the day-to-day management and operation of such a business.

15. The advent of BPP would substantially reduce revenue and eliminate profitability of Digital's pay telephone operations. There would be no incentive or reason for interexchange carriers to compensate Digital for agreeing to route long-distance traffic to them. These revenue reductions will limit Digital's ability to finance the acquisition and installation of new payphone equipment. Additional payphone locations will not be installed.^{8/} Existing

^{8/} The Commission itself has concluded that one of the benefits of operator services competition is that it encourages increased availability of payphones in previously underserved areas. Final TOCSIA Report, supra, at p. 27. Digital's own installation record confirms this to be the case. See, Section II, supra, at p. 2, para. 3.

marginal and potentially other locations would have to be removed. These would include payphones in areas where the equipment was expensive to maintain due to vandalism. Payphone service options to the public would shrink. Polar believes that other independent payphone providers will be similarly affected.

16. The Commission apparently believes that doubling the current dial around compensation amount would largely "solve" the revenue losses resulting from BPP and adequately compensate independent payphone providers so that they could continue their current level of service. See, FNPRM, supra, at p. 10, n. 25. The data above reflect that the current flat-rate compensation mechanism (\$6.00 per month) already falls substantially short of compensating independent payphone providers for the ever-expanding dial-around traffic. And competitive payphone providers currently are not even compensated for the new 1-800-type alternate access call vehicles (e.g., 1-800-COLLECT). Per call compensation is the only realistic way to compensate independent payphone providers for the use of their equipment. Any such compensation should reflect the true relationship between the cost of providing the payphone gateway to the network and the incremental cost of carrying the call on the network. Based on such a comparison, the lion's share of call revenue (65-75%) should go to the independent payphone provider. The additional cost of carrying the call on the network is more than compensated by the balance (i.e., 25-35%).

17. Polar and Digital currently estimate that, based on BPP as described in FNPRM, because of the impact on their operator

services and payphone business they would have to lay off sixty to eighty percent (60%-80%) of their current work force. This would involve the release of 114 to 152 employees. As noted below, such a release would have a dollar impact of its own in terms of income tax revenues, unemployment burdens and suppliers/vendors of Polar and Digital. See, Section VI, infra, para. 24-25.

18. In Polar's view, BPP would make the independent pay telephone business a decidedly less attractive opportunity, if a realistic opportunity at all. New entry would, as a result, be discouraged. Thus, contrary to the Commission's assertion that BPP would increase competition, competition would more likely be lessened. Pay telephone service would in many areas remain a local exchange carrier monopoly. In other areas, the marketplace would head back in that direction. Such a result of BPP would decidedly not be in the public interest.

**VI. THE COST ESTIMATES FOR BPP ARE LARGE, UNCERTAIN
AND NOT COMPREHENSIVE**

19. By almost any standard, the dollar costs of BPP are very large.^{2/} The Commission's latest estimate of nonrecurring charges is \$1.1 billion. FNPRM, supra, at p. 14, para. 27. The current estimate for recurring expenses is \$60 million per year. Id. The total overall estimate for BPP modifications are roughly \$420 million per year. Id.

^{2/} Even the Commission concedes that it is an "expensive technology." FNPRM, supra, at p. 2, para. 2.

20. By the Commission's own admission the estimated costs of BPP are uncertain and unreliable. And there may not be certainty for some time.

"To implement and operate BPP, LECs, and to a lesser extent OSPs, would be required to make substantial network modifications. LEC's have submitted data on the costs of these modifications, but these data are not as reliable as we would like, primarily for three reasons. First, some equipment vendors have been unwilling to offer prices without a more detailed explication of LEC requirements. Second, some of the software needed for BPP has not yet been developed. Third, LECs do not know the extent to which they will be able to obtain discounts that they customarily receive from vendors."

FNPRM, supra, at pp. 13-14, para. 20 (emphasis supplied) see, id. (Separate Statement of Commissioner James H. Quello). In most cases the proposal to proceed with a project of this magnitude despite cost uncertainty is a prescription for disaster. In any case, the Commission cannot approve BPP in the face of such soft cost estimates.^{10/}

21. Furthermore, these estimates do not appear to be comprehensive. For example, they do not appear to account for overhead loadings required by some carriers. See, FNPRM, supra, at p. 16, para. 27, notes 43 and 44. There appears to be no cost included associated with implementing BPP for "independent" local exchange carriers. See, FNPRM, supra, at p. 24, para. 50. Nor are there any expenses incorporated for the balloting and notification

^{10/} Whether it can ever obtain reliable estimates is doubtful. The Commission properly recognized that "cost estimates for technologies that have not yet been fully developed are inherently inexact...." FNPRM, supra, at p. 20, para. 37.

of consumers for BPP. See, FNPRM, supra, at p. 28, para. 62. The failure to factor in these costs makes the overall BPP cost figures understated.

22. The Commission should make no mistake about who will ultimately pay the very substantial direct costs for BPP. These costs will be passed on to the end-user, an end-user that will now have less options. The Commission, based on its soft cost estimates, believes that there could be "an additional \$.15 per call in BPP charges." FNPRM, supra, at p. 27, para. 58, n. 88.^{11/} It is not clear whether this is based on spreading the costs over BPP calls or all operator services calls. So the real cost increase to BPP users could be much greater. In light of the current acceptance and use of the present access code system, imposing these additional costs on consumers is unnecessary and not in the public interest.

23. Moreover, these costs will not be offset by savings of commissions and other costs. First, the Commission's estimate of commission levels does not reflect the rate/commission adjustments that are or will be occurring as a result of the aggressive advertising of alternative means of access. Second, the Commission itself concedes that it will have to boost compensation to adequately compensate independent payphone providers. A truly

^{11/} The Comptel Report estimates \$.63 to \$.99 per call benefited by BPP. Comptel Report, supra, at p. 2.

equitable increase would further reduce cost savings.^{12/} Third, operator service and independent payphone providers who want to try to survive will justifiably impose their own charges for otherwise uncompensated use of their equipment. Fourth, other projected cost savings will also be offset.^{13/}

24. Further, however, the Commission has totally ignored the peripheral but real costs associated with the revenue impact of BPP on operator services or independent pay telephone providers like Polar and Digital. As outlined above, if BPP is implemented as currently proposed, Polar and Digital would be forced to lay off a substantial portion of their collective work force. This would have an impact on taxes paid by these employees, unemployment compensation costs, and the employees' expenditures in the community.^{14/} It clearly also would affect the taxes and other fees paid by Polar and Digital to Federal, state and local authorities.^{15/}

^{12/} Even Ameritech admitted that only 30 percent of the commissions paid in its region would actually be a saving of BPP. Comptel Report, supra, at p. 19.

^{13/} The Commission estimates it will save regulatory costs but with such a severe financial impact there would undoubtedly be those who seek to thwart the requirement for BPP and there would be regulatory expenses to ensure compliance.

^{14/} Based on the combined payroll of Polar and Digital, such a layoff would involve millions of dollars in salaries, taxes and other benefits currently paid by the two companies collectively.

^{15/} In addition to income and employment taxes, these include contributions to Federal and state funds (such as the TRS fund) used to meet or promote certain statutory requirements or goals.

25. A major retrenchment in Polar and Digital's business also would affect its suppliers, vendors and landlords. These include operator service providers, local exchange carriers, equipment manufacturers, distributors and installers, and office building owners, all of which would suffer as a result of the impact of Digital and Polar. The Commission may not be able to measure this ripple effect precisely, but it cannot be ignored or discounted. These costs must be factored into the process of assessing whether the purported benefits of BPP outweigh its very substantial costs. When made part of the equation, the scale further tips decidedly against BPP.

**VII. THE CURRENT STATE OF THIS MARKETPLACE DOES
NOT JUSTIFY THE COST OF BPP**

26. The Commission must assess the cost of BPP and its erstwhile benefits in the light of its own conclusions about the "0+" marketplace. In the Final TOCSIA Report, the Commission unequivocally found:

"We conclude that consumers in today's OSP marketplace are being protected from unfair and deceptive practices relating to their use of operator services to place interstate calls. The Commission's actions have enabled consumers, in the vast majority of cases, to reach their carrier of choice thereby enabling them to pay reasonable rates. Both TOCSIA and the Commission's rules require unblocking of 800 and 950 access to allow consumers to reach their carrier of choice. Consumers are increasingly making use of these options to dial-around OSPs and reach their preferred carrier."

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We conclude that market forces are securing rates that are just and reasonable. Most significantly, consumers are protected from unreasonably high rates through the statutory and regulatory mandate of dial-around access options. These dial-around options allow consumers to override the aggregator's OSP selection by dialing extra digits to reach their carrier of choice. The consumer thereby avoids paying the unusually high charges of some OSPs. Instead, the consumer pays the rates charged by his carrier of choice and receives the service of that carrier. The immediate benefit to the consumer that exercises this option is clear. However, consumers benefit in the long-term as well. As more callers dial-around presubscribe OSPs, aggregators will experience a decline in commission revenue. This will force OSPs to compete for aggregator contacts on the basis of factors that are of interest to the consumer such as rates and quality of service.

Final TOCSIA Report, supra, at p. 30.

27. Nothing in the Commission's FNPRM reflects a change in these conclusions. The additional, marginal increment of convenience that BPP ostensibly would provide does not justify the high cost. The marketplace is working to allow consumers to reach their carrier of choice (i.e., the one they want to pay to carry the call). It is having an ameliorative effect on rates charged by non-major operator service providers. Final TOCSIA Report, supra, at p. 22 ("[O]verall, the average sample charge is trending downward.") The instances of rates substantially higher than AT&T and the industry average are "increasingly rare." Final TOCSIA Report, supra, at p. 19. In the face of these findings, the extensive record in this BPP proceeding does not support the expenditure of \$1.5 billion or more. When the principal benefits

being sought are already being provided, such an expensive decision would not be in the public interest.

**VIII. THE COMMISSION-DESCRIBED BENEFITS OF BPP
DO NOT OUTWEIGH ITS TRUE COSTS**

28. The Commission contends that there are three principal benefits of BPP: (a) simplification of access to the telephone network (b) a refocusing of competitive energies on end users (c) more effective competition with AT&T. FNPRM, supra, at p. 6, para. 9. However, when gauged against the economic and competitive costs of BPP outlined above, these "benefits" place a distant second. Further, these "benefits" are largely being obtained under the current system.

29. First, contrary to the Commission's conclusion, there is little evidence that consumers find access-code dialing confusing and are desperate for the marginal convenience of BPP. The steady quantum increase in the use of these codes only confirms that conclusion. Expenditure of well over a billion dollars to address a demand that is largely non-existent is unwise and unnecessary.

30. Second, the competitive focus of major interexchange carriers such as AT&T and MCI already is on "0+" end users. The widespread advertising campaigns for use of dial-around access is targeted directly at those end users through ubiquitous media outlets. Competing OSPs will continued to be forced to adjust their own rates to cope with this competitive focus or they will continue to lose traffic to these major competitors. If these other operator service providers do not follow suit the marketplace will naturally, over time, reduce their call levels.

31. Third, AT&T's alleged competitive advantage is largely due to their proprietary calling card. The solution is not to require BPP, with all its negative trappings. The pro-competitive resolution is to require AT&T to allow all operator service providers to validate its card (as it has for its former operating subsidiaries), just as the FCC has done for other calling cards. This is a much cheaper and competitively more sensible outcome than BPP will ever be.

**IX. IN ANY CASE THE COSTS OF BPP SHOULD BE
RECOVERED FROM COST CAUSERS**

32. If the Commission finally determines that BPP is in the public interest, the costs associated with implementing and operating BPP must be imposed on those who use it. This is consistent with the long-standing Commission "policy generally...to attribute costs to cost causers." FNPRM, supra, at 27, para. 58. The entire premise of the Commission's tentative decision is that consumers want this convenience and would be willing to pay "a few cents more per call to enjoy it." Id. It would be grossly unfair to impose on those consumers who did not want to do so the costs incurred by others that did. The Commission should not abandon its time-honored principle. The costs of BPP should be recovered only from BPP calls. The record in this proceeding does not call for a decision otherwise.

X. RESTRICTION ON DIALING AROUND BPP SHOULD BE REJECTED

33. If BPP is implemented, the Commission has proposed to prohibit aggregators from preventing "0+" dialed calls from reaching the preferred carrier of the billed party. Polar and

Digital agree that imposing such a restriction is directly contrary to the Commission's policies promoting competition in customer premises equipment, long distance service and the local exchange markets. Furthermore, the Commission is setting up a new set of enforcement issues for itself. In seeking to remedy one set of declining problems, it is opening a potential door to other types of non-compliance. This makes little regulatory sense.

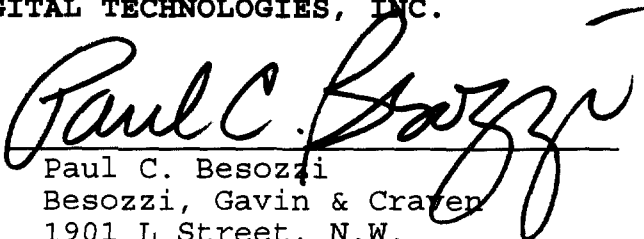
XI. CONCLUSION

In the face of well-reasoned opposition, the Commission should reverse its tentative conclusion that BPP is in the public interest. It is an expensive (how expensive, even the Commission does not know) technology for which there is no clamor in the marketplace. BPP will add to consumer costs and reduce competition in areas where the Commission has sought to foster it. Even major potential beneficiaries of BPP are against it, including its original proponent. After five years and a largely negative record, the Commission should recognize that BPP's "costs" far outweigh its benefits and terminate this docket.

Respectfully submitted,

**POLAR COMMUNICATIONS CORP. AND
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